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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.195/187/2012-RA / 5284

Date of Issue: 12/12/19

ORDER NO. 145 /2019-CX (WZ)/ASRA/MUMBAI DATED 05-11-2019 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : M/s Abyssinia Impex

Respondent : Deputy Commissioner(Rebate), Central Excise, Raigad.

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. US/485/RGD/2011 dated 22.12.2011 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

ORDER

This Revision Application is filed by the M/s Abyssinia Impex, 2, Kanara Biness Centre, 'A' Wing, Ghatkopar Link Road, Behind Everest Garden Building, Laxminagar, Ghatkopar (E), Mumbai 400 075 (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. US/485/RGD/2011 dated 22.12.2011 passed by the Commissioner (Appeals-II), Central Excise Mumbai.

2. The issue in brief is that the Appellant a merchant exporter had procured excisable goods from the manufacturer. They exported the goods so procured from the manufacturer and filed following rebate claim as indicated below:

Sl.No.	RC No. date	ARE-1 No & date	MR date	Amount claimed
1	25910 dt 21.02.07	04 dt 30.05.06	14.09.06	43,248/-
2	24609 dt 08.02.07	09 dt 21.01.06	10.02.06	12,566/-
	Total			55814/-

On processing the claim the Appellant was issued deficiency/ memo vide F. No V/15- /Reb/Abyssinia/ Rgd/10110826 dated 19.08.2010 for the following deficiencies:

- (i) There was no self selling certificate given on the face of ARE-1.
- (ii) Declaration at Sr. 1 to. 3 (a), (b) & (c) of ARE-1 was in-complete.
- (iii) Chapter Heading shown on Central Excise Invoice and the export documents were not tallying.

The Deputy Commissioner (Rebate), Central Excise, Raigad vide Order-in-Original No. 209/10-11/AC(Rebate)/Raigad dated 29.04.2011 in his finding stated that the issue in r/o deficiency at Sr.No. 1 stands settled vide Order No. V/RA-Hemari/03/RGD/09-10/581 dated 29.09.2009 and reject the rebate claim on the grounds that

- (i) The declaration at Sr.No. 3(a),(b) and (c) was incomplete; and
- (ii) Chapter Heading shown on Central Excise Invoice and the export documents are not tallying.

Aggrieved, the Appellant then filed an appeal with the Commissioner (Appeals-II), Central Excise Mumbai, who vide Order-in-Appeal No. US/485/RGD/2011 dated 22.12.2011 upheld the Order-in-Original dated 29.04.2011 and rejected their appeal.

3. Being aggrieved, the Appellant then filed the current Revision Application on the following grounds :

3.1 that the action taken by the Hon. Commissioner (Appeals), in dismissing their appeal without going into the merits and facts of the case should be set aside.

3.2 that it is an internationally accepted principle that goods to be exported out of a country are relieved of the duties borne by them at various stages of their manufacture in order to make them competitive in the international market. The most widely accepted method of relieving such goods of the said burden is the scheme of rebate. Thus in order to make Indian goods competitive in the International market, the tax element in the exporter's cost is refunded through the system of rebate. This is only a reimbursement and not any kind of incentive. The said amount of duty was paid on the goods exported and paid at the time of clearance for export. Therefore, rejection of the genuine rebate claim in part only on technical grounds as is done by the adjudicating authority in the present case, is nothing but harassment to the genuine exporter and discouraging export.

3.3 that all the observation raised by the Appellate authority is of procedural one and the same needs to be condoned.

3.4 that as per Notification No. 19/2004-C.E. (N.T.) dated 06.09.2004 (herein after as 'Notfn 19/2004') needs to fulfill two mandatory conditions i.e.

- (i) Goods cleared for export needs to be exported; and
- (ii) On Goods cleared for export proper duty has been discharged.

The detailed reply to these mandatory conditions are given below. The remaining all conditions are procedural one and can be condoned in the interest of export.

3.5 that there is no allegation that the goods cleared did not go out of India. Physical export has been accepted and is supported by the Central Excise Authorities and Customs Authorities by endorsing the ARE-Is and Shipping Bills by Customs Authorities. ARE1 No., Date and Division are also mentioned on the Shipping Bill. When the physical export is not in dispute all other allegations are procedural one and needs to be set aside.

- 3.6 that duty payment particulars had been called from the jurisdictional Range directly by the Deputy Commissioner (Rebate). However, there was no allegation in this respect.
- 3.7 that all the documents raised in the O-in-O had been submitted. The Authority did not consider their submission and also submission of Bank Realisation Certificate.
- 3.8 that Self Sealing allegation has been accepted by the Adjudicating Authority and in respect of no filing/wrong filing of declaration at the end of ARE1 necessary clarification submitted by the manufacturer who was preparing the ARE. The declaration has not been accepted by both the authorities. This was referred in OIA also. This was only a procedural error. There was no other allegation.
- 3.9 that the CBEC vide Circular No. 687/03/2003-CX dated 02.01.2003 clarified that duty paid through CENVAT credit must be refunded in cash in the case of export. Vide CBEC Circular No. 510/06/200-CX dated 3.2.2000, it was also clarified that there is no question of re-quantifying the amount of rebate by the rebate sanctioning authority once the duty payment is certified by the jurisdictional Range Supdt. It was also clarified that the rebate sanctioning authority should not examine the correctness of the assessment but should examine only the admissibility of rebate of duty paid on the export goods covered by a claim.
- 3.10 that they rely on the Order of Hon. Cestat in the case of Commr. Vs Suncity Alloys Pvt. Ltd. [2007 (218) ELT 174 (Raj.) - Rebate-Exempted goods cleared for export on payment of duty - Union of India not, in any event, entitled to retain the amount in question - If no duty was leviable and the assessee was not required to pay the duty still if he has paid the duty which has been received by the Commissioner, they cannot retain the same on any ground and must refund the amount received from assessee as on their own showing - Assessee entitled to remove goods on payment of duty in ordinary course and he is entitle to claim rebate thereon because the goods were exported out of country on payment of excise duty - Rule of Central Excise Rules, 2002 [para 4].

- 3.11 that as per para 11.1 of CBEC Circular No. 81/81/94-CX dated 25.11.1994, all the conditions except the time limit for filing the Rebate claim as per Section 11B of the Central Excise Act, 1944 can be condoned by the Commissioner. In this they relied on few cases law.
- 3.12 that Rebate is not any kind of incentive. This is only a reimbursement. It is the policy of the Government that no duty should be exported along with the goods. Procedural mistakes if any needs to be condoned in the interest of export as long as there is no loss to the revenue.
- 3.13 that the CBEC Circular 510/06/2000-CX., dated 03.02.2000 is binding on the Department as held by Hon. Supreme Court in number of cases. Hence the Order in Original needs to be set aside.
- 3.14 that in respect of procedural infraction, they relied on few Government of India orders passed for condoning non-mandatory Procedural provisions relying on Hon. Tribunal Order.
- 3.15 that, in the above genuine circumstance and bonafide facts, the said Order-in-Appeal is, improper, in correct, against the law, and thus is required to be set aside *in limine*.
- 3.16 they prayed that the Order-in-Original be set-aside and their rebate claim of Rs. 55, 814/- be refunded to them.

4. A personal hearing in the case was held on 22.11.2017, 27.12.2017, 12.02.2018 and 20.08.2019. However neither the Appellant nor the Respondent attended the said hearings. Hence the case is being decided *ex parte* on merits.

5. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

6. Government notes that the Notification No.19/2004-CE(JNT) dated 6.9.2004 which grants rebate of duty paid on the goods, laid down the conditions and limitations in paragraph (2) and the procedure to be complied with in paragraph (3). The fact that the Notification has placed the requirement of presentation of claim for rebate to Central

Excise" in para 3(b) under the heading "procedures" itself shows that this is a procedural requirement. Such procedural infractions can be condoned.

7. Government notes that as per Para 11.1 of the CBEC Circular No. 81/81/94-CX dated 25.11.1994 under F.No. 209/18/93-CX,6 (Pt.) -

"11.1 Relaxation to be granted by the Collector : The Collector is empowered to condone/ relax any condition relating to rebate of excise duty on goods exported for reasons to be recorded in writing, if he is satisfied that the goods have actually been exported. However, the Collector is not empowered to condone delay in filing of the rebate claim filed after the expiration of six months from the date of export, the time limit prescribed under Section 11B of the Central Excise Act. It may be noted that his power has to be exercised by the Collector and not the Assistant Collector who may be acting as Maritime Collector or the Jurisdictional Assistant Collector."

8. In respect of issue regarding the declaration at Sr.No. 3(a), (b) and (c) being incomplete, Government observes that the Appellant had submitted that

"2.(ii) The declaration at Sr.No. 3(a)(b) and (c) is incomplete - The manufacturer M/s Contemporary Packtech Pvt. Ltd. (having its Regd. Office and Factory at Plot No. 94, GIDC, Por-Ramangamdi - 391 243, Baroda) in its letter submitted that the declaration given in ARE-1 should be read as Notification No. 21/2004 dtd 06.09.2004 instead of Notification No. 42/2001 dtd 26.06.2002."

Government observes that the Order-in-Appeal and Order-in-Original have stated that said mistake was rectified vide letter from the manufacturer. Accordingly, the rebate claims cannot be rejected on point of procedural lapse which can be cross verified or are obvious mistakes.

9. Regarding issue of Chapter Heading shown on Central Excise Invoice and the export documents not tallying, Government observes that the rate of duty of C.H. 7612 and that of C.H. 7616 is the same i.e. 10% . Government finds the mistake of chapter heading made in their Shipping Bill prepared by Customs Deptt is condonable as it is revenue neutral.

10. Government finds that the deficiencies observed by the first Appellate authority are of procedural or technical nature. In cases of export, the essential fact is to ascertain and verify whether the said goods have been exported. In case of errors, if the same can

be ascertained from substantive proof in other documents available for scrutiny, the rebate claims cannot be restricted by narrow interpretation of the provisions, thereby denying the scope of beneficial provision. Mere technical interpretation of procedures is to be best avoided if the substantive fact of export is not in doubt. In this regard the Government finds support from the decision of Hon'ble Supreme Court in the case of *Suksha International - 1989 (39) ELT 503 (SC)* wherein it was held that an interpretation unduly restricting the scope of beneficial provision is to be avoided so that it may not take away with one hand what the policy gives with the other. In *UOI vs. A.V. Narasimhalu - 1983 (13) ELT 1534 (SC)*, the Apex Court observed that the administrative authorities should instead of relying on technicalities, act in a manner consisted with the broader concept of justice. In fact, in cases of rebate it is a settled law that the procedural infraction of Notifications, Circulars etc., are to be condoned if exports have really taken place, and that substantive benefit cannot be denied for procedural lapses. Procedures have been prescribed to facilitate verification of substantive requirement. The core aspect or fundamental requirement for rebate is the manufacture of goods, discharge of duty thereon and subsequent export.

11. In view of the foregoing, the Government holds that detail verification of the rebate by the original adjudicating authority as to the evidence regarding payment of duty i.e relevant Invoice and ARE 1 as produced by the appellants in their rebate claim, has to be taken into consideration. The Appellant is also directed to submit their relevant records/ documents to the original authority in this regard for verification.

12. In view of the above, Government set aside the impugned Order-in-Appeal No. US/485/RGD/2011 dated 22.12.2011 and remands back the instance case to the original authority which shall consider and pass appropriate orders on the claimed rebate and in accordance with law after giving proper opportunity within four weeks from receipt of this order.

13. The Revision Application is disposed off in terms of above.

14. So ordered.

(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 145/2019-CX (WZ)/ASRA/Mumbai DATED 05.11.2019.

To,
M/s Abyssinia Impex,
2, Kanara Business Centre, 'A' Wing,
Ghatkopar Link Road,
Behind Everest Garden Building,
Laxminagar, Ghatkopar (E),
Mumbai 400 075.

Copy to:

1. The Commissioner of GST & Central Excise , Raigad Commissionerate.
2. The Deputy / Assistant Commissioner (Rebate), GST & CX , Raigad Commissionerate.
3. Sr. P.S. to AS (RA), Mumbai
4. Spare Copy.